

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 11TH DAY OF OCTOBER 2018 / 19TH ASWINA, 1940

WP(C).No. 32692 of 2018

PETITIONER/S:

KITEX GARMENTS LTD
P.B NO.5, KIZHAKKAMBALAM, ALUVA 682562,
(REPRESENTED BY SRI MANOJ T.P CHIEF MANAGER-
FINANCE AND ACCOUNTS

BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.N.SANTHOSHKUMAR
SRI.P.J.ANILKUMAR (A-1768)

RESPONDENT/S:

- 1 ASSISTANT STATE TAX OFFICER
STATE GOODS AND SERVICE TAX DEPARTMENT,
INTELLIGENCE SQUAD NO-II, THEVARA, ERNAKULAM,
KOCHI -682015
- 2 COMMISSIONER OF STATE TAXES,
TAX TOWER, KARAMANA, THIRUVANANTHAPURAM-695
002.
- 3 STATE OF KERALA,
REPRESENTED BY IT'S SECRETARY TO TAXES,
SECRETARIAT, THIRUVANANTHAPURAM-695 002.

OTHER PRESENT:

GP. DR. THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.10.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The Petitioner, a dealer under the new GST regime, claims to 'manufacture and export readymade garments'. It also asserts that it pays no tax, for its supplies fall under the Section 16 of the IGST Act. Recently, it imported some raw material from Switzerland and had it cleared on 1.10.2018 by the customs authorities.

2. On 1.10.2018, the petitioner generated the e-way bill at 5.52 pm. After generating that bill, it had the goods loaded into a transport vehicle at the Container Freight Station of the Customs Department at Vallarpadam. But it could not transport them during night hours. The next day, 2nd October, was a holiday. So it could transport the goods only on 3.10.2018 at 10.40 am.

3. The goods in transit, on 03.10.2018 at 11.15 am., the respondent authorities intercepted the transport and detained the vehicle, under Section 129 of the SGST Act. They demanded tax of Rs.11,36,221.56, besides the penalty of an equal amount. The cause for detention was that the e-way bill had expired. Pending further adjudication, to have the interim custody of the goods, the petitioner must comply with Rule 140 of the CGST Rules:

bank guarantee and simple bond for the tax, penalty, and interest, too. So assailing the detention, the petitioner has filed this writ petition.

4. After taking me through the record, the petitioner's counsel submits that the delay is minimal and that was under unavoidable circumstances. But the respondent's attitude is hypertechnical. He further draws my attention to Ext.P9 explanation, dt.4.10.2018, the petitioner submitted to the Assistant Sales Tax Officer. According to him, the petitioner issued the e-way bill as per the request from its customs broker, who must have cleared the consignment from the port and delivered it to the petitioner's factory as originally planned—on time. But the customs broker could remove the vehicle from the port only on 03.10.2018. The delay was because, first, the e-way bill was generated on 1st October late in the evening ; then the next day was a holiday.

5. In the end, the learned counsel has submitted that if the authorities detained and confiscated the goods even for minor lapses, the commerce in the State would come to a standstill. According to him, if the lapse pointed out does not aim at evading the tax or does not amount to substantial statutory infraction, the authorities ought to take a pragmatic view. Such a

view becomes imperative, more particularly, because of the new and yet-to-be-settled process under the GST regime.

6. Of course, the petitioner's counsel has also contended that Rule 140 of the CGST/ SCST Rules violates Article 301 of the Constitution. But that challenge can await an appropriate time for its vindication, if ever.

7. On the other hand, Dr. Thushara James has drawn my attention to Section 129, besides other provisions of KGST Act. According to her, the petitioner under Rule 138 (10) had the option of having the time extended. Time extended, it could have reloaded the e-way bill. At any rate, she has strenuously opposed any judicial intervention because once the statutory conditions stand diluted, she continues, it would provide a weapon for the tax evaders. She has also stressed that the respondent authorities following the procedure to a perfection cannot be castigated as hyper-technical.

8. That said, the Government Pleader submits that, as seen from the Ext.P9, the petitioner may have faced a genuine difficulty. If this Court intervenes at this stage, it may become a precedent, throwing the departmental actions out of gear. Instead, she suggests an alternative: this Court may set aside the Ext.P2 and remand the matter to the Assistant State Tax Officer, who will consider the issue afresh, especially, keeping in view

the petitioner's Ext.P9 explanation. She further assures the Court that the ASTO will pass orders within 24 hours, once the petitioner approaches him.

9. For this proposal, the petitioner's counsel agrees.

10. So without adverting to the merits, I dispose of the writ petition setting aside the Ext.P10. I further clarify that the petitioner can approach the ASTO tomorrow. On the petitioners' approach, the authority will reexamine the issue, keeping in view the petitioner's Ext.P9 explanation and the other materials, and pass orders on the same day.

The writ petition stands disposed of.

Sd/-
DAMA SESHADRI NAIDU
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE INVOICE NO.140582 DATED 10.08.2018 ISSUED BY M/S. TEXTIL COLOR, SWITZERLAND.
EXHIBIT P2	TRUE COPY OF THE BILL OF ENTRY NO.8250946 DATED 29.09.2018 ALONG WITH OUT OF CHARGE ORDER NO.2030093005 ON 01.10.2018.
EXHIBIT P3	TRUE COPY OF E-WAY BILL NO.591058415222 DATED 01.10.2018 AT 5.52 PM.
EXHIBIT P4	TRUE COPY OF THE GATE PASS NO.41819 DATED 03.10.2018 ISSUED FOR CLEARANCE OF GOODS.

- EXHIBIT P5 TRUE COPY OF THE NOTICE IN FORM GST MOV-02 DATED 03.10.2018 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE VERIFICATION IN FORM GST MOV-04 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE ORDER OF DETENTION IN FORM GST MOV-06 DATED 03.10.2018 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE NOTICE IN FORM GST MOV-07 BEARING NO.OR 2/25/GST/2018-19 DATED 04.10.2018 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE REPLY DATED 04.10.2018 FILED BY THE PETITIONER BEFORE THE RESPONDENT.
- EXHIBIT P10 TRUE COPY OF THE ORDER NO.OR II/25/GST/2018-19 DATED 04.10.2018 ALONG WITH ORDER OF DEMAND MOV-09 ISSUED BY THE 1ST RESPONDENT.